said note in United States currency; the court, therefore, erred in overruling the defendant's exceptions to the report of the commissioner and in confirming said report.

For these reasons the decree must be reversed, and cause remanded for further proceedings, in accordance with this opinion.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

COURT OF APPEALS OF NEW YORK.[1]

SUPREME COURT OF PENNSYLVANIA.[2]

ATTORNEY.

Negligence—Statute of Limitations—In an action against an attorney for neglect to collect, the statute begins to run from the time the attorney first became liable: *Rhines's Adm'rs.* v. *Evans*, 66 Pa.

An attorney gave a receipt for a note "for collection," the Statute of Limitations did not begin to run in his favor from the date of the note, but from a reasonable time afterwards for beginning proceedings: *Id.*

In the absence of peremptory instructions, the attorney is allowed a reasonable discretion. What is reasonable most frequently depends upon circumstances, and then is for the jury: *Id.*

Where the duty is immediate, the right of action arises, and the statute begins to run from the attorney's receipt of the money: *Id.*

Suit for neglect in not commencing proceedings was brought against an attorney seven years and five months after a note had been placed in his hands for collection. *Held*, as matter of law, that the statute was a bar: *Id.*

BANK.

Balance to Credit of Depositor—Appropriation of.—Chase having balances in a bank requested them to pay a debt for him, agreeing that if they would do so, his balances should be applied to the repayment. The bank paid the debt and Chase gave his note for the amount; it being agreed that the balances should be adjusted in a short time. Before they were adjusted the bank failed and went into the hands of a receiver. *Held*, that there had been an appropriation of the balances to the note, and that in a suit by the bank on the note the balances were to be deducted: *Chase* v. *Petroleum Bank*, 66 Pa.

The transaction was a contract, the appropriation of the balances being the consideration for the advance. After the advance by the bank, Chase could not have checked out the balances, nor could the balances have been attached by Chase's creditors: *Id.*

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[1] From S. Hand, Esq., Reporter; to appear in 44 N. Y. Rep.

[2] From P. F. Smith, Esq., Reporter; to appear in 66 Penna. State Rep.

Bankruptcy.

Effect of Proceedings—Evidence.—A judgment for purchase-money was entered against Green; afterwards, January 29th, he applied for the benefit of the Bankrupt Law and was discharged as of February 24th. Barr bought his land May 8th, under the judgment; the land was set apart to Green under the bankrupt exemption, and he sold to Fehley. In ejectment by Barr, Fehley alleged that Barr concealed his title and encouraged Fehley to buy. *Held*, that evidence that Fehley had been informed by a stranger of Barr's title was relevant: *Fehley* v. *Barr*, 66 Pa.

Fehley testified on cross-examination that he did not know whether the stranger had informed him. *Held*, that this was not collateral and he might be contradicted: *Id.*

The record of proceedings in bankruptcy is only *primâ facie* evidence of the facts stated in it and may be contradicted by parol: *Id.*

A purchaser at sheriff's sale acquires the interest of the defendant at the date of the judgment, although he may have been adjudged a bankrupt before the sale: *Id.*

A judgment under which the land was sold being for purchase-money, there was no exemption under the Bankrupt Law: *Id.*

The Court of Common Pleas in which a judgment is entered has jurisdiction after the defendant has been adjudged bankrupt, and a sale by the sheriff would pass a perfect title to the purchaser: *Id.*

The assignee in bankruptcy is not a judicial officer, his setting apart exempt property is not conclusive: *Id.*

The assignee's setting apart land as exempted, does not divest the lien of judgment clear of exemption: *Id.*

Common Carrier.

Duty as to Delivery to Consignee.—The duty of common carriers by railroad, as to the delivery of goods at the place of destination, is subject to the following rules: If the consignee is present upon their arrival, he must take them without unreasonable delay. If he is not present but lives at or in the immediate vicinity of the place of delivery, the carrier must notify him of their arrival, and he then has a reasonable time within which to remove them. If he is absent, unknown, or cannot be found, then the carrier can place them in its freight-house, and, if the consignee does not call for them in a reasonable time, the liability as a common carrier ceases. If the consignee has a reasonable opportunity to remove them and does not, he cannot hold the carrier as an insurer: *Fenner* v. *The Buffalo and State Line R. Co.*, 44 N. Y.

When the consignee has notice of the arrival of his goods, and, without any refusal or unwillingness to deliver on the part of the carrier, agrees with the latter, for their mutual convenience, that the goods be left over night in the freight-house, the liability as a common carrier has ceased, and the goods being destroyed by fire during the night, the company cannot be held as an insurer: *Id.*

When goods are shipped by railroad to a specified point, whence the owner intends to remove them to their final destination, the railroad company is not an intermediate carrier, and the rules applicable are those which govern at a place of destination: *Id.*

Liability in Case of Jettison.—Where a jettison becomes necessary, for the preservation of the remainder of a cargo, by reason of a violent storm, the loss is by act of God, although occasioned through the immediate agency of men: *Price* v. *Hartshorn*, 44 N. Y.

In order to extend the liability of common carriers to such a loss, there must be an express agreement, unequivocally and necessarily evincing that such was the intention of the parties: *Id.*

The provision in the bill of lading, "damage or deficiency in quantity specified, if any, to be deducted from charges by consignees," does not express a warranty of safe delivery, or a special contract extending the liability of the carrier, but refers to any damage or deficiency resulting from his default or negligence: *Id.*

The opinions of experts as to the necessity of a jettison are competent: *Id.*

The plaintiff, a common carrier, received a cargo of barley, under bills of lading, specifying: Shipped in good order, to be delivered in like good order at the place of destination, as consigned, without delay; damage or deficiency in quantity specified, if any, to be deducted from charges by consignees; freight payable on delivery. In the course of his voyage he was overtaken by a violent storm and compelled to throw overboard a portion of the cargo, in order to save the residue and the boat. *Held*, that he was entitled to recover freight upon the amount delivered, without any deduction on account of the loss so occasioned: *Id.*

Contribution.

For Negligence.—A traveller passing over a bridge which was maintainable by two counties, was injured by its breaking down. He recovered damages in an action for negligence against one of the counties. *Held*, that county might recover contribution from the other: *Armstrong County* v. *Clarion County*, 66 Pa.

The rule that there cannot be contribution between wrongdoers is confined to cases where the plaintiff must be presumed to know that he was doing an unlawful act: *Id.*

A promise to indemnify against an act not known at the time to be unlawful, is valid: *Id.*

Contribution is fixed on general principles of natural justice, and does not spring from contract: *Id.*

Corporation.

Mortgage—Execution against.—Robinson issued execution and levied on land as belonging to a railway company; he thereby affirmed the company's title: *Robinson* v. *Atlantic and G. W. R. Co.*, 66 Pa.

A company owning land and having power to mortgage, gave a mortgage of *all* their estate and property real and personal; the mortgage covered the land, whether it was necessary to the enjoyment of its franchises or not: *Id.*

A receiver of all the mortgaged property having been appointed, the land was in legal custody and could not be levied on: *Id.*

Whether the land should pass into the hands of a receiver, could be determined only by the court that appointed him: *Id.*

Damages. See *Sale; Telegraph Company.*

DEED.

Boundary Lines.—Calls in a deed are always to be controlled by lines on the ground: *Craft* v. *Yeaney*, 66 Pa.

Heath sold a subdivision of a warrant, marking the east line on the ground, west of the east line of the warrant; the deed called for the east line of the warrant as the boundary. *Held*, that the call was controlled by the marked line: *Id.*

Heath brought ejectment for the portion—which was unseated—east of the subdivision, and recovered a verdict and judgment; a *habere* was not issued. *Held*, that he might maintain trespass on his constructive possession: *Id.*

EQUITY.

Irreparable Damage—Legal Rights.—The Act of December 14th 1863 (Landlord and Tenant) is a complete system for obtaining possession by a landlord: *Brown's Appeal*, 66 Pa.

A landlord commenced proceedings before a justice to recover possession; before judgment, the magistrate and plaintiff were enjoined by the Common Pleas. *Held* to be error, and out of the jurisdiction of the court. The remedy for the tenant was by certiorari or appeal: *Id.*

Where there is a positive statutory remedy, which may be pursued, equity cannot interfere on the ground of irreparable mischief. *Lex nemini facit injuriam*: *Id.*

Irreparable damage cannot be alleged against statutory remedies legally pursued: *Id.*

Fraud—Subrogation.—Irwin bought land by articles and paid part of the purchase-money; Lamberton entered a judgment against him; afterwards, Irwin assigned the articles to Bleakley, antedating the assignment to precede the judgment, to defraud Lamberton, and Bleakley paid the vendor the balance of the purchase-money. Lamberton bought Irwin's title under his judgment. Lamberton was entitled to specific performance from the vendor without repaying Bleakley: *Bleakley's Appeal*, 66 Pa.

Bleakley was not entitled to subrogation to the vendor's rights. Subrogation is of pure equity and benevolence, not of contract: *Id.*

One attempting to defraud another by payment, cannot ask repayment from him attempted to be defrauded: *Id.*

The payment was not on a bargain with the vendor, but was voluntary: *Id.*

EVIDENCE.

Letter-Press Copies.—Letter-press copies of correspondence are not in any sense originals, but must be proved as other secondary evidence: *Foot* v. *Bentley*, 44 N. Y.

Lost Instrument—Secondary Evidence.—To make a copy of a lost instrument admissible, the evidence of the genuineness of the original must be of the most positive kind: *Krise* v. *Neason et al.*, 66 Pa.

V. and G. executed an agreement, and jointly delivered it to R. to keep; he was the agent of both for that purpose: *Id.*

It was R.'s duty not to part with it to any one, and to furnish a copy, when required, to either party: *Id.*

R.'s acknowledgment of a paper produced by him as the original, was *primâ facie* evidence of its genuineness: *Id.*

One witness swearing to the handwriting in a paper is sufficient to take it to the jury, although he may be contradicted by any number of witnesses or circumstances: *Id.*

The question of admissibility for the court is always the *prima facies*; the sufficiency is for the jury: *Id.*

R. died; search amongst his papers was all that was required to admit secondary evidence: *Id.*

R. was called on for the paper; he made a copy which he gave to the witness, to whom he read the original, for comparison. R. being the agent of both, the presumption was that he read correctly: *Id.*

Whether one reading the original to another holding a copy, or whether the copy and original should not change hands; not decided: *Id.*

Executor and Administrator.

Purchase by Executor of Testator's Property.—The rule which forbids an executor to purchase, or be interested in the purchase of real estate sold to pay debts, is violated, if the executor becomes interested before confirmation, although not until after the property is struck off; and the sale is thereby rendered void: *Terwilliger* v. *Brown*, 44 N. Y.

The facts that the fair value of the premises was bidden, and the sale was afterward confirmed, *ex parte*, will not give it validity: *Id.*

Nor is it material that the agreement, by which the executor became interested, might be void under the Statute of Frauds: *Id.*

In a proceeding under the statute for the sale of real estate to pay debts of a testator, B., an auctioneer employed by the executor, bid in the premises himself, and, before confirmation of the sale, made an arrangement with the executor by which they were to be jointly interested in the purchase. The sale was subsequently confirmed by the surrogate, *ex parte*, and, a few days afterward, the executor executed a deed of the premises to B., and, on the same day, received from B. a deed to himself of one-half thereof. *Held*, that the sale was void, both because B., who purchased, was an agent of the executor in making the sale, and because the executor became interested before the sale was consummated: *Id.*

Insurance.

Bursting of Boiler.—A policy of insurance (marine) which excepts loss by the bursting of boilers, but covers that "occurring subsequent to and in consequence of such bursting," does not cover a total loss occasioned by an explosion so violent as to tear open the sides of the vessel to such an extent that the water admitted sinks her in five or ten minutes. As the vessel was manifestly worthless the moment the explosion had occurred, the loss was immediate upon, not subsequent to, the explosion, within the meaning of the policy: *Evans* v. *Columbian Ins. Co.*, 44 N. Y.

Particular Average—Total Loss.—Owners of merchandise insured against perils of the seas, "free of particular average only," are entitled to recover as for a total loss, although some portion of the goods may be brought into the port in specie, if the right to abandon is exercised

during the continuance of the peril and there is a total loss of value to the owner. Total physical loss is not necessary: *Wallerstein* v. *Columbian Ins. Co.*, 44 N. Y.

JUDGMENT.

Regularity of.—A suit was brought against two defendants; one was returned not served, a general appearance was entered, the declaration was against the one served "interpleaded with" the others; some steps in the suit were as to "*defendants*," some as to "*defendant*;" the final one was "the defendants confess judgment. B. & S., attorneys for defendants." The court below refused, after hearing depositions, to vacate the judgment. *Held*, that the judgment was valid: *Hatch* v. *Stitt*, 66 Pa.

LIMITATIONS, STATUTE OF. See *Attorney*.

Runs against Municipal Corporation.—The Commonwealth by Act of Assembly granted to the borough of Erie the "3d section" of certain lands, reserving 100 acres to be selected by commissioners for a poor-house for Erie county. The commissioners located the 100 acres "at the south-west corner" of section 3, leaving a strip between its west line and the west line of the section. The strip belonged to the borough of Erie: *Evans* v. *Erie County*, 66 Pa.

Evans was in possession of the strip at the passage of the act; the Statute of Limitations began to run in his favor against Erie from that time: *Id.*

The statute runs against a county or other municipal corporation. *Nullum tempus occurrit reipublicæ*, applies to the sovereign only: *Id.*

MASTER AND SERVANT.

Liability for Servant's Incompetency or Negligence.—Where the defendant (a gas company), being informed that gas was escaping in the cellar of an occupied house, sends its employee to ascertain the location of the leak, (it being responsible for the loss and repairs, if the leak was in the service pipe), and the person so sent, by lighting a match in the cellar, caused an explosion, by which the plaintiff is injured, such employee, although acting for the benefit of the occupants of the house as well as of the defendant, is the agent of the defendant only, and the defendant is liable for his negligence: *Lannen* v. *The Albany Gas Light Co.*, 44 N. Y.

If such agent is incompetent or ignorant, it is negligence to select him or to send him without proper instruction. If competent, the company is liable for his careless performance of his employment. If the service was the business of the defendant, although beneficial to the occupants, it was bound to exercise ordinary care and prudence. Even if it was gratuitous, it is still bound to exercise some care and liable for gross negligence: *Id.*

The act of the plaintiff's father (the plaintiff being an infant) in causing the leak, if proved, would be too remote to become contributory negligence, and the fact is immaterial: *Id.*

NEGLIGENCE. See *Attorney; Master and Servant; Telegraph Company.*

SALE.

Remedies of Vendor on Failure of Purchaser to Perform Contract—Damages.—On failure of the purchaser to perform a contract for the sale of personal property, the vendor, as a general rule, has the election of three remedies: 1. To hold the property for the purchaser, and recover of him the entire purchase-money. 2. To sell it after notice to the purchaser, as his agent for that purpose, and recover the difference between the contract price and that realized on the sale. 3. To retain it as his own, and recover the difference between the contract price and the market price at the time and place of delivery: *Dustan* v. *McAndrew*, 44 N. Y.

Where the purchaser assigns his interest in the contract to parties who agree to perform it on his part, and, on their failure to perform, himself fulfills and takes the property, he becomes the vendor as to such assignees. The consideration for the assignment added to the amount paid by him to the original vendor forms the contract price; and if he sells the property, after notice, the difference between this sum and the amount realized on such sale is the true measure of his damages: *Id.*

SURETY.

Notice to Creditor to proceed—Negligence.—A request, made by sureties to a creditor, to enforce securities held by the latter from their principal, to the end that they may be discharged by satisfaction of the debt, does not impose upon the creditor an absolute duty to enforce such securities without delay. It is only necessary that the creditor act in good faith and be free from gross neglect: *Black River Bank* v. *Page*, 44 N. Y.

If the creditor unreasonably delays, or acts in bad faith, or is grossly negligent, whereby the value of the securities is impaired, the loss thus occasioned is a defence, to that extent, available to the sureties; but mere delay will not suffice to discharge them: *Id.*

TELEGRAPH COMPANY.

Negligence—Delay in transmitting Message.—The plaintiffs' message, instructing their brokers to "buy five Hudson," was transmitted and delivered by the defendant, a telegraph company, "buy five hundred." Learning of the error, the plaintiffs telegraphed again to their brokers; but owing to the delay so occasioned, the plaintiffs lost, by the advance in price of the stock so ordered, $1375. *Held*, that this sum was the measure of their damages, for which the defendant was liable: and, *semble*, that the action could have been maintained, if no purchase had been made, on proof of the rise in the value of the stock: *Rittenhouse* v. *Independent Line of Telegraph*, 44 N. Y.

TENDER.

Payment into Court.—Tender is a good plea in *bar*, and if followed up, protects the defendant. The sum brought into court becomes the money of the plaintiff, and the verdict goes for the defendant, carrying with it costs: *Wheeler* v. *Woodward*, 66 Pa.